85-1053

No._____

Supreme Court, U.S.
FILED
DEC 17 1985
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

CHRISTINE CRAFT,

Petitioner,

—v—

METROMEDIA, INC.,

Respondent.

BRIEF OF NOW LEGAL DEFENSE AND EDUCATION FUND AND EQUAL RIGHTS ADVOCATES AS AMICI CURIAE IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

MARSHA LEVICK
EMILY J. SPITZER
(Counsel of Record)
NOW Legal Defense and
Education Fund
99 Hudson Street
New York, New York 10013
(212) 925-6635

Attorneys for Amici Curiae

BEST AVAILABLE COPY

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	iii
INTERESTS OF AMICI CURIAE.....	1
STATEMENT OF THE CASE.....	1
SUMMARY OF ARGUMENT.....	1
REASONS FOR GRANTING THE WRIT.....	3
I. THE DECISION OF THE COURT OF APPEALS TO REVERSE THE JURY VERDICT BELOW ON FRAUD IS IN CONFLICT WITH THE COMMON LAW RULE THAT ONLY WHERE THERE IS A COMPLETE ABSENCE OF PROBATIVE FACTS TO SUPPORT THE SUBMISSION OF A CASE TO A JURY DOES REVERSIBLE ERROR OCCUR.	3
II. THE COURT OF APPEALS' IMPROPER RE-EXAMINATION OF THE FACTS VIOLATES THE SEVENTH AMENDMENT	14

III. THIS CASE PRESENTS LEGAL ISSUES OF FAR-REACHING IMPORTANCE SINCE THE COURT OF APPEALS DECISION ACCEPTS AND PERPETUATES STEREOTYPED IMAGES OF WOMEN IN THE MEDIA 16

A. The Reliance On Stereotypes Perpetuates The Under-Employment of Women in the Media 19

B. The Unique Power and Influence of Television Requires That Stereotyped Images Be Avoided In Its Employment Practices. 24

IV. CONCLUSION 29

TABLE OF AUTHORITIES

	Page
CASES	
Atlantic and Gulf Stevedores Inc. v. Ellerman, Lines Ltd., 369 U.S. 355 (1962).....	7
Craft v. Metromedia Inc., 572 F. Supp 86 W.D. Mo. 1983).....	passim
Craft v. Metromedia Inc., Slip opinion.....	passim
Crues v. K.F.C. Corporation, 729 F.2d 1145 (8th Cir. 1984).....	8
Dace v. Ace Industries, Inc., 722 F.2d 374 (8th Cir. 1983).....	5
Davis v. Califano, 613 F.2d 957 (D.C. Cir. 1979).....	17
Dick v. New York Life Insurance Company, 359 U.S. 437 (1959).....	7
Easley v. Empire Incorporated, 757 F.2d 923 (8th Cir. 1985).....	7
F.C.C. v. League of Women Voters of California, 82 L.Ed. 2d 278 (1984).....	25, 26
F.C.C. v. Pacifica Foundation, 438 U.S. 726, reh. denied, 439 U.S. 883 (1978)	25

Gallick v. Baltimore & Ohio Railroad Company, 372 U.S. 108 (1959)..... 6

Hopkins v. Prive Waterhouse, ____ F. Supp. ____ (D.C.C. Sept. 20, 1985)..... 16-17

In the Matter of Petition for Rulemaking to Require Broadcast Licensers to Show Nondiscrimination in their Employment Practices, F.C.C. 68-702, 13 F.C.C. 2d 766 (1968).....26

Lavender v. Kurn, 327 U.S. 645 (1946)..... 7

Melia v. Ford Motor Co., 534 F.2d 795 (8TH Cir. 1976)..... 8

N.A.A.C.P. v. F.P.C., 425 U.S. 662 (1976)..... 25

Robinson v. Union Carbide Corp., 538 F.2d 652 (5th Cir. 1976), cert.denied, 434 U.S. 822 (1977).. 17

Setser v. Novack Inn. Co., 638 F.2d 1137 (8th Cir. 1981)..... 8

Simblest v. Maynard, 427 F.2d 1 (2d Cir. 1970)..... 16

Tennant v. Peoria, 321 U.S. 29 (1943)..... 5, 6

Walker v. KFC Corporation, 515 F. Supp 612 (S.D. Cal. 1981), modified on other grounds, 728 F.2d 1215 (1984) 15, 16

CONSTITUTIONAL PROVISIONS

Seventh Amendment to the United States Constitution..... passim

STATUTES

Communications Act of 1934, 47 U.S.C. § 309 (1984)..... 25

BOOKS, STUDIES AND PERIODICALS

S. Pingree, The Effect of Nonsexist Television Commercials and Perceptions of Reality on Children's Attitudes About Women, 2 Psychology of Women Quarterly 262 (1974)..... 27

P. Schwartz, The Social Psychology of Female Psychology, presented at the Conference for New Research on the Psychology of Women, Madison, Wisconsin (1975)..... 23

United States Commission on Civil Rights, Window Dressing: An Update (1979)..... 21

United States Commission on Civil Rights, Window Dressing on the Set: Women and Minorities in Television (1977)..... 20

Women's Media Project, The Media Project Study..... 21

INTERESTS OF THE AMICI CURIAE*

The NOW Legal Defense and Education Fund and Equal Rights Advocates are organizations dedicated to securing equal rights for women before the law.**

STATEMENT OF THE CASE

Amicus Curiae adopts the Statement of the Case as set forth in the brief of Petitioner.

SUMMARY OF ARGUMENT

This Court should grant certiorari for several reasons. The decision of the Court of Appeals to reverse the finding of fraud in favor of Craft denied Craft of her

* Counsel for both parties have consented to the filing of this brief amici curiae. The original consent letters are being filed with the Clerk of the Court.

** Descriptions of these organizations appear in the Appendix to this brief.

constitutional rights as guaranteed by the Seventh Amendment to the United States Constitution. In ruling improperly that the fraud case was insufficient for submission to the jury, and in engaging in its own fact-finding to reach that conclusion, the Court of Appeals denied Craft her right to a jury trial.

The Eighth Circuit also re-examined the evidence adduced at trial in a manner contrary to the dictates of the Seventh Amendment. The Seventh Amendment requires that an appellate court review the facts submitted to a jury in conformity with the common law. The common law mandates that conflicts in the evidence be resolved in favor of Craft. The Eighth Circuit failed to conform to that mandate and thus violated Craft's Seventh Amendment rights.

This case presents legal issues of far-reaching importance. In rejecting the

factual findings of the jury, the Court of Appeals has substituted its own improper factual determinations which both are based upon and serve to perpetuate stereotyped images of women in the media.

REASONS FOR GRANTING THE WRIT

I. THE COURT OF APPEALS' DECISION THAT THE FRAUD CASE WAS IMPROPERLY SUBMITTED TO THE JURY DENIED CRAFT OF HER CONSTITUTIONAL RIGHT TO A JURY TRIAL

The Court of Appeals for the Eighth Circuit improperly engaged in its own fact-finding to arrive at its remarkable decision that Christine Craft ("Craft") had failed to put forward sufficient evidence against Metromedia, Inc. ("Metromedia") to have her claim submitted to a jury. The Circuit Court's decision is particularly remarkable in light of the fact that not one but two separate juries had previously determined that Metromedia was liable to Craft for fraud.

The factual question presented by the fraud case was whether Metromedia, when it told Craft that it would not force her to change her appearance, in fact did intend to do just that. The jury, whose verdict was reversed, answered that factual question in Craft's favor. A prior jury, whose findings were rejected by the District Court, also reached the same conclusion. The Court of Appeals decided, however, to usurp the role of the jury by engaging in its own factfinding to reach the opposite conclusion.

The Seventh Amendment to the United States Constitution states:

> In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

The Seventh Amendment, as explained in Dace v. ACF Industries, Inc., 722 F.2d 374 (8th Cir. 1983), a case relied on by the Court of Appeals, thus guarantees the right to a jury trial. A party will be denied the right to have a case submitted to a jury only if there can be but one conclusion based upon the evidence. Id. Thereafter, an appellate court may usurp the jury's role by determining that the case should never have been submitted only when there is a complete absence of probative facts to support the jury's verdict. Id. In reaching that conclusion the appellate court may review all of the evidence, but if there are relevant factual conflicts, the only correct factfinder is the jury. The appellate court may not substitute its own set of "facts" when reviewing the evidence for submissibility. Thus, in Tennant v. Peoria, 321 U.S. 29, 35

(1943), quoted in Gallick v. Baltimore & Ohio Railroad Co., 372 U.S. 108, 114-115 (1963), the Supreme Court stated:

> It is not the function of a court to search the record for conflicting circumstantial evidence in order to take the case away from the jury on a theory that the proof gives equal support to inconsistent and uncertain inferences. The focal point of judicial review is the reasonableness of the particular inference or conclusion drawn by the jury. It is the jury, not the court, which is the fact-finding body. It weights the contradictory evidence and inferences, judges the credibility of witnesses, receives expert instructions and draws the ultimate conclusion as to the facts. The very essence of its function is to select from among conflicting inferences and conclusions that which it considers most reasonable. (cases omitted)...[T]hat conclusion, whether it relates to negligence, causation or any other factual matter, cannot be ignored. Courts are not free to reweigh the evidence and set aside the jury verdict merely because the jury could have drawn different inferences or conclusions or because judges feel that other results are more reasonable. (emphasis added)

Similarly, in Lavender v. Kurn, 327 U.S. 645 (1945), the Supreme Court, reversing the Supreme Court of Missouri, which held that there was no substantial evidence of negligence to support the submission of the case to the jury, stated:

> Only when there is a complete absence of probative facts to support the conclusion reached does a reversible error appear. But where, as here, there is an evidentiary basis for the jury's verdict, the jury is free to discard or disbelieve whatever facts are inconsistent with its conclusion. And the appellate court's function is exhausted when that evidentiary basis becomes apparent, it being immaterial that the court might draw a contrary inference or feel that another conclusion is more reasonable.

See also, Atlantic and Court Stevedores Inc. v. Ellerman Lines Ltd., 369 U.S. 355 (1962); Dick v. New York Life Insurance Co., 359 U.S. 437 (1959); Easley v. Empire

Inc., 757 F.2d 923, 928 (8th Cir. 1985); Setser v. Novack Inn. Co., 638 F.2d 1137 (1981); Melia v. Ford Motor Co., 534 F.2d 795 (8th Cir. 1976)

An appellate court, thus, may reverse the decision of a trial court to submit a case to the jury only if all of the evidence pointed one way and was susceptible of no reasonable inferences sustaining the position of the plaintiff. Crues v. KFC Corp., 729 F.2d 1145, 1148 (Cir. 1984).

In the instant case the Court of Appeals acknowledged that it was obligated to resolve direct factual conflicts in favor of Craft, that it had to accept as true all facts supporting Craft which the evidence tended to prove, that it must give Craft the benefit of all reasonable inferences and that it must refuse to reverse the jury if the evidence so viewed

would allow reasonable jurors to differ as to the conclusions that could be drawn. Slip Opinion at 23, 24. However, the Court of Appeals merely gave lip-service to the appropriate standard while engaging in a wholesale assault on the jury's function. Rather than viewing the evidence in a light most favorable to Craft, the Eighth Circuit opted to view the evidence in Metromedia's favor to reach its decision that Craft's case should never have been submitted to the jury.

The Petition for Rehearing by the Court of Appeals of Craft (submitted by Petitioner in her Appendix at pages A75 - A97) enumerates the many instances in which the Court of Appeals ignored much of the evidence on which the jury based its factual conclusions, and substituted factual conclusions of its own. Those facts will not be enumerated in full here,

other than certain of the more salient ones.

As Craft testified, at the time of her audition and interview, there was no discussion of her "getting help" with her clothing and makeup. (A81) Indeed she made it clear that she would not be interested in the job if Metromedia "wanted someone who looked different than the person on the [audition] tape." (A82). Craft was assured that Metromedia liked her appearance and had no intention of changing either her hair, make up or clothing. (A83) Replogle, in testimony, admitted that management told Craft that they did not intend to make her over, redo her or change her fundamental appearance. (A84) Shannon testified that at no time was Craft told that she would be subject to the dictates of the Media Consultants. (A85). Bob Hamilton, Craft's negotiator,

repeatedly made it clear to Replogle and Shannon that there was to be no makeover, no changing of Craft into something she was not. (A84)

Crucially, management never told Craft of its always-extant belief that appearance was the number one criterion for a television newsperson -- despite her informing them of her reasonable desire to be "a journalist, not a beauty queen." (A85) Direct and circumstantial evidence clearly showed that, while Metromedia was making representations that they understood Craft's concern and that they had no intention of changing her general appearance, these representations were false. (A85) The Media Consultants, whose advice was firmly relied on by Metromedia, made negative comments on Craft's appearance, and suggestions about changing it immediately after seeing the audition tapes

(A86) and before Craft commenced work. This fact was kept from Craft on Metromedia's instructions, (A86), although they intended to work on her "problems," using the same "intrusive control" methods used in the past with other on air personnel. (A87) Shannon admitted to criticizing Craft's appearance and to beginning the work on her clothing and appearance "from day one," despite the fact that no research had been done on it. (A88) From the beginning to the end of her employment, appearance was focused on "continuously". (A89)

Based on the foregoing it cannot be argued that the evidence, as detailed to the jury, is not susceptible of a reasonable inference sustaining Craft's position. Indeed, the evidence establishes all of the requisite elements for a finding of fraud. Thus, the case was properly

submitted to the jury, and the Eighth Circuit's ruling to the contrary denied Craft of her Seventh Amendment right to a jury trial by her peers.[1]

---

[1] Although only the second jury's verdict is specifically the subject of this appeal, the existence of two jury verdicts in favor of Craft is important in highlighting the extent to which the Court of Appeals has usurped the constitutionally mandated role of the jury as factfinder.

The first jury awarded actual damages of $375,000 and punitive damages of $125,000 to Craft, but a new trial was ordered by Judge Stevens "because of the excessive verdict attributable to incomplete instruction of the jury and to incessant and overwhelming trial publicity." Craft v. Metromedia, Inc., 572 F. Supp 868, 882 (1983). The second jury was correctly instructed and sequestered "to assure both parties an impartial jury," 572 F. Supp 882. To further "ensure the integrity of the jury", 572 F., Supp 882, Judge Stevens ordered a retrial by a jury of twelve to "reduce the risk that one or two headstrong jurors might unduly influence the jury" and to "increase the chances that reason will prevail over passion." The second trial was also moved to a new venue, in an attempt to remove the case from an area where jurors would have been most heavily bombarded by pre-trial publicity. This second jury, assembled as a result of Judge Steven's correct emphasis on the importance of the jury, again found

II. THE COURT OF APPEALS' IMPROPER RE-EXAMINATION OF THE FACTS VIOLATES THE SEVENTH AMENDMENT

The Eighth Circuit improperly re-examined facts tried by the jury and in so doing violated another important precept of the Seventh Amendment which requires that "no fact tried by a jury... shall be otherwise re-examined in any court of the United States, than according to the rules of the common law." The Eighth Circuit concluded that "there is insufficient evidence for a reasonable jury to have found that KMBC at the time it made its representation contemplated such extensive measures as to her appearance so as to make false its statements that it intended 'no makeover or substantial changes.'" In effect, the Eighth Circuit entered a

---

in Ms. Craft's favor. This unimpeached jury verdict should stand. For this reason, Amici submit that the petition for certiorari should be granted.

judgment notwithstanding the verdict and did so based upon its own unconstitutional fact-finding.

Judge Stevens in the District Court heard all the evidence firsthand and on no less than six occasions before, during and after the trial considered and rejected motions which would have wrested the case from the jury. Judge Stevens correctly denied the Defendant's motion for judgment notwithstanding the verdict since, under the common law it could have been granted "only if the motion for directed verdict should have been granted." Walker v. KFC Corp., 515 F. Supp 612, 615 (S.D. Cal. 1981). The Defendant's prior motion for a directed verdict had been denied after extensive post-trial briefing and argument, since it did not satisfy the test set forth in Walker:

> Simply stated ... whether the evidence is such that, without weighing the credibility of the witnesses or otherwise considering the weight of the evidence, there can be but one conclusion as to the verdict that reasonable men could have reached.

Simblest v. Maynard, 427 F.2d 1 (2d Cir. 1970). Judge Stevens correctly adhered to common law rules in holding that a directed verdict was inappropriate.

The Court of Appeals, however, effectively entered a judgment notwithstanding the verdict based upon a reexamination of the facts which failed to heed he teachings of the common law and thus violated the Seventh Amendment.

III. THIS CASE PRESENTS LEGAL ISSUES OF FAR-REACHING IMPORTANCE SINCE THE COURT OF APPEALS DECISION ACCEPTS AND PERPETUATES STEREOTYPED IMAGES OF WOMEN IN THE MEDIA

Employment decisions, although they may be based on subjective criteria, may not be based upon stereotyped assumptions

about women. Hopkins v. Price Waterhouse, ___ F. Supp. ___ (D.D.C. September 20, 1985). Reliance on stereotypes in employment decisions violates Title VII of the Civil Rights Act of 1964. Id.

> Whenever a promotion system relies on highly subjective evaluations of candidates by individuals or panels dominated by members of a different sex, there is ground for concern that such high level subjectivity subjects the ultimate promotion decision to the intolerable occurrence of conscious or unconscious prejudice. Robinson v. Union Carbide Corp., 538 F.2d 652, 662 (5th Cir. 1976), cert. denied, 434 U.S. 822 (1977). Such procedures must be closely scrutinized because of their capacity for masking unlawful bias. Davis v. Califano, 613 F.2d 957, 965 (D.C. Cir. 1979). This scrutiny comprehends examination of evaluation procedures that permit or give effect to sexual stereotyping.

Hopkins v. Price Waterhouse, ___ F. Supp. ___ (Slip. Op. 21) (D.D.C. 1985).

In the instant case employment decisions which were made about Craft were

highly subjective, and many of those decisions were based upon stereotyped views of the role of women in the broadcast media. Indeed, the central issue in the fraud count is rooted in stereotyped notions concerning the so-called proper appearance of women on television, and the all too prevalent practice of judging women in the media more on their appearance than on their merit.

Two juries, composed of a total of eighteen people, carefully scrutinized the employment practices of Metromedia and, on both occasions, found Metromedia liable to Craft for fraud. The Eighth Cicuit, however, refused to accept the factual findings of those eighteen people. Instead, the Eighth Circuit embarked on its own fact-finding mission and reached a conclusion reminiscent of those stereotypes by rejecting the juries' findings that

Metromedia's attempt to change Craft's appearance was fraud. The Eighth Circuit opinion suggests that the appearance of a woman in the media is of such importance to her job qualifications that imposed changes in her appearance can never be actionable fraud. Judicial tolerance of such stereotyping runs counter to nearly two decades of intensive efforts to eradicate stereotypes, and this Court should grant certiorari to prevent the reinforcement of such stereotypes.

A. The Reliance On Stereotypes Perpetuates The Under-Employment of Women in the Media

Television stations and networks have historically employed women in limited numbers and in limited capacities. This exclusion of women from significant and highly visible 'on air' positions profoundly effects societal attitudes towards the status and role of women. The importance

of television in shaping public opinion was expressly acknowledged by the United States Commission on Civil Rights in its report Window Dressing on the Set: Women and Minorities in Television (1977) (hereinafter Window Dressing):

> [Television] confers status on those individuals and groups it selects for placement in the public eye, telling the viewer who and what is important to know about, think about, have feelings about. Those who are made visible through television become worthy of attention and concern; those who television ignores remain invisible.

Window Dressing, at 1.

The under-representation and under-utilization of women by the broadcast industry has been well-documented. In Window Dressing, the Civil Rights Commission found, in a study of one particular network's news programs based on 1974 data, that male correspondents outnumbered female correspondents nearly eight to one. Id. at

51. The Commission also found that women and minorities rarely covered crucial national news stories, but instead were assigned topics considered to be of particular interest to women and minorities, and which were themselves infrequently covered. Id. When the Commission updated its report in 1979, it found no statistical improvement in the intervening years: There were still approximately eight male news correspondents for every female news correspondent. U.S. Commission on Civil Rights, Window Dressing: An Update (1979).

Most recently, a 1984 study undertaken by the Women's Media Project of the NOW Legal Defense and Education Fund confirmed the abysmal progress women have made in network news. Women's Media Project, The Media Project Study (1984). The study revealed that, in the last ten years, the

number of women reporting the news on network television had increased by only three tenths of one percent. Id.

The low representation of women in the media stems not only from outright discrimination but also from the fact that men and women are judged differently for the same jobs. Recent academic studies have corroborated what was always intuitively obvious: society holds very different notions about what men an women are and should be. Men are seen as independent, active and logical; women are seen as dependent, passive and illogical. L. Broverman, S. Vogel, D. Broverman, P. Clarkson, P. Rosenkrantz, Sex Role Stereotypes: A Current Appraisal, 28 Journal of Social Issues 59 (1972). Researchers have also confirmed that women are described and judged by their physical appearances to a much greater extent than men. P. Schwartz,

The Social Psychology of Female Psychology, paper presented at the Conference for New Directions for Research on the Psychology of Women, Madison, Wisconsin 1975. That tendency pervades media employment decisions.

While both man and women are restricted by these preconceptions and expectations, women suffer the greater burden. The characteristics expected of them are traits traditionally devalued by society; yet failure to live up to them leads to accusations of "unladylike" behavior resulting in further prejudicial consequences. See W. Mischel, Sex Bias In The Evaluation of Professional Achievements, 66 Journal of Educational Psychology 157 (1974).

The Court of Appeals, in rejecting the findings of two juries that Metromedia had defrauded Craft by trying to make her

over despite their promises to the contrary, has given license to the media to continue judging women on their appearance.[2] Unless this Court accepts certiorari there is a great risk that this historical stereotyping will be continued.

B. The Unique Power and Influence of Television Requires That Stereotyped Images Be Avoided In Its Employment Practices

The unparalleled power and influence of television to mold public opinion and attitudes is unquestioned. Its unique position as a communicator of ideas and information has been acknowledged time and

---

[2] This improper decision by the Eighth Circuit to take on the role of factfinder regarding the fraud count is particularly ironic in light of the fact that the Eighth Circuit found it unnecessary to disturb any of the factual findings made by the trial court judge in connection with the dismissal of Craft's Title VII count in the first trial. The Eighth Circuit mistakenly seems to attach more credibility to factfinding by judges than it does to factfinding by juries.

again in decisions of the Supreme Court, recognizing the need to apply special regulatory principles to the industry to ensure that its obligation as a "public trustee" is fulfilled. See, e.g., F.C.C. v. League of Women Voters of California, 82 L. Ed. 2d 278, 284 (1984); F.C.C. v. Pacifica Foundation, 438 U.S. 726 (1978); N.A.A.C.P. v. F.P.C., 425 U.S. 662 (1976).

Congress has likewise recognized the peculiar nature of the broadcast industry, and has consistently acted to ensure the broadest possible participation and access to the electronic airwaves. The Communications Act of 1934 specifically requires broadcast media licensees to act in the public interest, 47 U.S.C. § 309(a) (1984).

While much of the FCC's regulation of the industry has been geared towards

ensuring broad representation of a wide spectrum of community interests in actual programming, see, e.g., F.C.C. v. League of Women Voters, supra, the employment practices of the industry have been subjected to similarly rigorous scrutiny. Consistent with the obligation to operate in the public interest, the employment practices of a licensee have been considered equally relevant to its application for a broadcast license as consideration of its programming record. As the F.C.C. noted in In the Matter of Petition for Rulemaking to Require Broadcast Licensers to Show Nondiscrimination in their Employment Practices, F.C.C. 68-702, 13 F.C.C.2d 766 (1968):

> Because of the enormous impact which television and radio have upon American life, the employment practices of the broadcasting industry have an importance greater than that suggested by the number of its employees. The provision of equal

> opportunity in employment in that industry could therefor contribute significantly toward reducing and ending discrimination in other industries.

13 F.C.C.2d at 771. Cf. 47 U.S.C. § 309 (i) (A) (1984).

The unique responsibility of the broadcast industry to serve the public interest carries with it a special obligation to avoid rigorously discrimination in its employment practices. By virtue of its enormous power to influence public opinion, the industry must recognize that the images it presents, both in its selection of programming and its selection of employees, are particularly determinative of the ultimate contours of that public opinion. See, e.g., S. Pingree, The Effect of Nonsexist Television Commercials and Perceptions of Reality on Children's Attitudes about Women, 2 Psychology of Women Quarterly 262 (1974). Reliance on

sex-based stereotypes regarding television newscasters will merely serve to perpetuate, rather than eradicate, sex discrimination in our society.

The Court of Appeals, in rejecting the findings of two juries, has substituted a judgment upholding upon stereotyped attitudes towards women in the media, and thus has served to promote the stereotyped notions which it is vital to eradicate. Overturning a jury's factfinding is always drastic; it is particularly suspect when two juries have reached the same conclusions and when the jury findings have rejected the stereotyped notions which we as a society are fighting so hard to reject.

CONCLUSION

Based upon the foregoing, amici curiae respectfully request that this Court issue a writ of certiorari to review the judgment and opinion of the Eighth Circuit.

Dated: December 17, 1985
New York, New York

Respectfully submitted,

Marsha Levick
Emily J. Spitzer
NOW Legal Defense and Education Fund
99 Hudson Street
New York, New York 10013

Attorneys for Amici Curiae*

*Attorneys for amici curiae gratefully acknowledge the assistance in the preparation of this brief provided by Alison Wetherfield.

The NOW Legal Defense and Education Fund ("NOW LDEF") is a non-profit civil rights organization that performs a broad range of legal and education services nationally in support of women's efforts to eliminate sex-based discrimination and secure equal rights. A major goal of the NOW LDEF has participated as amicus curiae in numerous employment cases before this Court, and participated as amicus curiae in this case before the Eighth Circuit.

Equal Rights Advocates ("ERA") is a non profit public interest law firm specializing in the area of sex discrimination. For over eleven years the law firm has been involved in all areas of law which affect equality between the sexes.

ERA is particularly concerned with

issues of discrimination in the work place because economic equality is fundamental to women's ability to become full and equal participants in society. The majority of cases litigated by ERA have challenged discriminatory employment practices or laws which impede women's employment opportunities. Pursuant to its concerns, ERA has participated in numerous cases in both the federal and state courts where issues concerning the rights of women have been raised.